

STATE OF MICHIGAN
COURT OF APPEALS

KAMLESH CHOPRA,

Plaintiff/Counter Defendant-
Appellant,

v

ALL-TECH INVESTMENT GROUP, INC.,

Defendant/Counter Plaintiff-
Appellee.

UNPUBLISHED

March 27, 2007

No. 268298

Wayne Circuit Court

LC No. 04-059525-NZ

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant is a brokerage firm. In March 1999, plaintiff opened an investment account that ultimately came to be managed by defendant. Due to alleged mismanagement of the account, plaintiff filed an arbitration claim against defendant with the National Association of Securities Dealers, Inc. The arbitrators denied plaintiff's claims. A copy of the arbitration award was mailed to the parties on June 1, 2004.

On July 1, 2004, plaintiff filed the instant suit to vacate the arbitration award. Defendant moved to dismiss plaintiff's complaint under MCR 3.602(J)(2)¹ on the ground that it was untimely filed. The trial court granted defendant's motion for summary disposition and to confirm the arbitration award. The court first noted that the complaint was untimely under MCR 3.602(J)(2) and so summary disposition was proper under MCR 2.116(C)(7). Further, the court found that plaintiff had failed to state a claim upon which relief could be granted under MCR 2.116(C)(8).

¹ This court rule requires applications to vacate to be made within 21 days of delivery of the award to the applicant.

This Court reviews de novo the lower court's interpretation and application of a court rule. *Marketos v American Employers Ins. Co.*, 465 Mich 407, 412; 633 NW2d 371 (2001).

Here, the trial court properly granted defendant's motion for summary disposition because plaintiff's complaint was untimely. MCR 3.602(J)(2) provides:

An application to vacate an award must be made within 21 days after delivery of a copy of the award to the applicant, except that if it is predicated on corruption, fraud, or other undue means, it must be made within 21 days after the grounds are known or should have been known.

MCR 2.107, which outlines the manner in which a party must be served, states in relevant part:

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) *Delivery to Attorney.* Delivery of a copy to an attorney within this rule means

- (a) handing it to the attorney personally;
- (b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or
- (c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

(2) *Delivery to Party.* Delivery of a copy to a party within this rule means

- (a) handing it to the party personally; or
- (b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.

(3) *Mailing.* Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

In her complaint, plaintiff acknowledged that, "On June 1, 2004, the arbitration panel mailed a copy of its award." Furthermore, the arbitration award states that it was served on June 1, 2004. In addition, the NASD's enclosure letter states that the award was either faxed or mailed to plaintiff on June 1, 2004.

Plaintiff argues that the arbitration award was not delivered to her until well after June 1, 2004. She claims she was visiting her sick mother and was not at home during June 2004. She argues that MCR 2.107(C)(2) requires that the letter be personally delivered to her. However, plaintiff ignores the portion of MCR 2.107(C) that provides that “[s]ervice on a party must be made by delivery or by *mailing* to the party at the address stated in the party’s pleadings” (emphasis added). There is ample evidence in the record, including plaintiff’s own complaint, establishing that the arbitration award was mailed to plaintiff on June 1, 2004. MCR 2.107(C)(3) provides that “[s]ervice by mail is complete at the time of mailing.” Therefore, plaintiff’s arguments are without merit. Defendant established that the arbitration award was mailed on June 1, 2004. Plaintiff did not file her complaint until July 1, 2004, beyond the 21-day deadline established by MCR 3.602(J)(2). Thus, the trial court properly dismissed plaintiff’s complaint for lack of timeliness. Given that our resolution of this issue disposes of this case, we decline to address plaintiff’s remaining issue.

Defendant requests that this Court grant costs and sanctions in the form of actual attorney fees by virtue of plaintiff’s vexatious appeal. Damages or other disciplinary action may be taken when an appeal or proceedings in an appeal are determined to be vexatious. MCR 7.216(C). Such a determination may be made at the Court’s own initiative “or on the motion of any party filed under MCR 7.211(C)(8).” MCR 7.216(C)(1). “A party’s request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule.” MCR 7.211(C)(8). In this case, defendant’s request for sanctions was contained in its brief filed under MCR 7.212 and, therefore, does not constitute a motion as required by the applicable court rule. Therefore, we decline to award sanctions under MCR 7.216(C).

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens